

BCC EQUIPMENT LEASING )  
CORPORATION, )  
 )  
Plaintiff, )  
 )  
v. ) Civil No. 03-195-B-S  
 )  
LAMBERT BEDARD et al., )  
 )  
Defendants. )

Plaintiff BCC Equipment Leasing Corporation (BCC) provided \$50 million in financing to Great Northern Paper, Inc. (GNP), in March 2002 through a sale and lease back transaction when, according to BCC, GNP's officers and directors knew that GNP was insolvent. In this action, BCC sues several former officers and directors of GNP based on allegations that they omitted or misrepresented facts related to the financial condition of GNP that were material to the financing agreement. Two groups of defendants have filed third-party suits against various business associations that form part of the Ernst & Young accounting firm family, alleging that they relied on the Ernst & Young defendants to provide certain accounting services and, therefore, the Ernst & Young defendants are derivatively liable to them for any liability they might have to BCC. Now pending are two motions by the Ernst & Young defendants to dismiss the third-party suits on the ground that they are not in compliance with Rule 14 and also fail to state claims under Rule 12. I recommend that the court **DENY** the motions (Docket Nos. 85 & 86).

## **Facts**

Because the motions to dismiss contend that the third-party complaints are not derivative of the first-party action, it is necessary to describe the allegations asserted by BCC in its complaint before setting forth the material allegations of the third-party complaints.

### ***A. The material allegations of the complaint***

In its first party suit, BCC alleges that the officer and director defendants defrauded or negligently misled BCC in conjunction with a sale and lease back financing arrangement. According to the complaint, the sale and lease back arrangement came into being in 2002 because GNP needed cash to be able to pay a capital gains tax of approximately \$35 million, which arose as a consequence of the sale of GNP's hydroelectric assets for \$150 million. (Docket No. 1, ¶¶ 54, 65.) Pursuant to the agreement, BCC bought all but one of GNP's paper making machines for in excess of \$50 million and leased the machines back to GNP. (*Id.*, ¶¶ 55, 65.) As security for future lease payments, BCC received a security interest and mortgage liens on substantially all of GNP's business and operating assets such that, in the event of default, BCC would be able to operate GNP's business or sell the business as a going concern. (*Id.*, ¶ 56.) In its commitment letter for the transaction, BCC specified that the lease would be considered in default if GNP went into default on its credit agreements with Congress Financial Corporation, which had issued GNP \$50 million in revolving credit in January 2001. (*Id.*, ¶¶ 21, 58.) In addition, the commitment letter specified that GNP must provide BCC with audited financial statements for the year ending 2001. (*Id.*, ¶ 58.) GNP supplied BCC not only with copies of its 2001 financial statements, which had been audited by Ernst & Young, but also with copies of its Congress Loan Agreement. (*Id.*, ¶¶ 60, 62.)

According to BCC, when the sale and lease back agreement was entered into, the officer and director defendants knew not only that GNP was insolvent, but also that GNP was currently in default on its Congress Loan Agreement. (Id., ¶ 61.) According to BCC, these defendants knowingly disguised the fact of GNP's insolvency by listing as assets on GNP's financial statements certain properties that had been transferred from GNP to Inexcon Maine, Inc., GNP's parent-holding company, which was owned, in turn, by Inexcon Paper, Inc., a corporation owned by defendants Lambert Bedard, Joseph Kass and Mendel Schwimmer, or corporations owned by them.<sup>1</sup> (Id., ¶¶ 15, 61.) The transfer of these assets to Inexcon, Maine, according to BCC, constituted a default under GNP's Congress Loan Agreement, rendered false certain representations made to BCC concerning GNP's compliance with Maine environmental law, and violated certain legal duties that an insolvent corporation owes its creditors. (Id., ¶¶ 23, 24, 28-33, 50-52, 66-72.) According to BCC, the failure to record or reflect these property transfers on GNP's financial statements constituted misrepresentations of material fact because BCC would not have entered into the sale and lease back agreement had it known of GNP's insolvency, the property transfers to Inexcon, Maine, GNP's noncompliance with Maine environmental law, and GNP's default under the Congress Loan Agreement. (Id., ¶¶ 49, 57, 61.) The officer and director defendants/third-party plaintiffs deny or answer that they are without sufficient knowledge or information to form a belief as to whether the subject asset transfers occurred and deny that any such transfers were not recorded on GNP's 2001 financial statements (Docket No. 26, ¶¶ 41-45, 49; Docket No. 32, ¶¶ 41-45, 49).

GNP ceased operations and filed for Chapter 11 bankruptcy protection on January 11, 2003. (Id., ¶ 73.) According to BCC, GNP owed a duty to BCC to disclose the alleged

---

<sup>1</sup> According to BCC, these transfers were made in recognition of GNP's insolvency or in anticipation of bankruptcy. The relevant allegations that describe what BCC refers to as the officer and director defendants' "illicit scheme" are found in paragraphs 34 through 48.

misrepresentations in the 2001 financial statements once it petitioned for bankruptcy protection. (*Id.*, ¶ 94.) Because GNP did not disclose the alleged misrepresentations even then, BCC alleges that it was doubly induced to extend GNP certain post-petition financing as well. (*Id.*, ¶¶ 73-76.) BCC now asserts three causes of action against the defendants: (1) fraud; (2) negligent misrepresentation and (3) breach of the fiduciary duties owed by an insolvent debtor to its creditors.<sup>2</sup> (*Id.* at 22-24.)

***B. The material allegations of the third-party complaints***

There are two third-party actions against Ernst & Young in this case. One is being pursued by Harold Gordon, John Kelsall, Robert Leathers, and Benoit Michel, who served on GNP's board of directors at all times relevant to the occurrences described in the complaint. (Docket No. 54, ¶ 6.) I refer to these defendants as the director defendants. The other third-party action against Ernst & Young is being pursued by Timothy Morgan, who served as GNP's chief financial officer at all times relevant to the occurrences described in the complaint. (Docket No. 55, ¶ 3.) Both Morgan and the director defendants contend that they relied on Ernst & Young's advice when performing their duties for GNP in relation to the above described occurrences. In addition, they contend that Ernst & Young breached some legal duties to them in connection with its involvement with GNP's 2001 financial statements for the BCC transaction. Because each group of third-party plaintiffs describes the nature of Ernst & Young's involvement somewhat differently, I outline the third-party complaints separately.

***1. Morgan's Allegations***

According to Timothy Morgan, he and other GNP personnel "repeatedly requested advice from [Ernst & Young] on the tax and accounting implications and ramifications of the proposed BCC transaction." (Docket No. 55, ¶ 12.) Morgan relates that he personally met with Ernst &

---

<sup>2</sup> The third count is advanced only against the director defendants.

Young representatives in February 2002 and "requested tax advice on the BCC transactions," but the Ernst & Young accountant "did not respond to his requests for tax advice." (*Id.*, ¶ 13.) Subsequent inquiries about the tax implications and record keeping issues that might arise from the transaction also went unanswered, according to Morgan. (*Id.*, ¶¶ 14-17.) As a consequence of Ernst & Young's failure to respond, alleges Morgan, GNP suffered a capital gains tax in excess of \$20 million. (*Id.*, ¶ 18.) Morgan further alleges that he is "now accused of wrongful conduct in the discharge of his duties as CFO" because of Ernst & Young's "failure to advise" him concerning the tax implications and other ramifications of the BCC transaction. (*Id.*, ¶ 19.) According to Morgan, his reliance upon Ernst & Young to advise him in this regard was reasonable. (*Id.*, ¶ 20.) Morgan alleges that Ernst & Young's acts or failures to act in its professional capacity support third-party claims for negligence and negligent misrepresentation.

## ***2. The Directors' Allegations***

According to the director defendants' third-party complaint, at all times relevant to BCC's claims, Ernst & Young served as "the tax, accounting and financial advisors and professionals for GNP and its board of directors," included matters of "financial governance." (Docket No. 54, ¶¶ 11-12.) The director defendants further allege that in discharging their duties as directors of GNP, they reasonably relied on "the tax, accounting and financial advice" provided by Ernst & Young, including "the tax, accounting and financial advice supplied by [Ernst & Young] with respect to the allegedly wrongful financial and real estate transactions that form the basis for the Complaint." (*Id.*, ¶¶ 16, 17.) Accordingly, these defendants assert third-party claims for indemnification, negligence, negligent misrepresentation, and breach of fiduciary duty.

## Discussion

In its motions to dismiss, Ernst & Young argues that the claims alleged in the third-party complaints are not proper third-party claims under Rule 14 because they do not derive from the claims asserted by BCC in its complaint. (Docket No. 85 & 86.) This is so, argues Ernst & Young, because there is no allegation that Ernst & Young had knowledge of or provided any advice concerning the transfer of assets from GNP to Inexcon Maine or the non-disclosure of these transfers on GNP's financial statements. (Docket No. 85 at 3-6; Docket No. 86 at 2-3.) In addition to the Rule 14 basis for dismissal, Ernst & Young also argues that the third-party complaints fail to state claims for which relief can be granted. I address both arguments in turn. In both instances, I accept as true all factual allegations in the third-party complaints and construe them in the light most favorable to the officer and director defendants to determine whether these defendants could prove any set of facts entitling them to relief on the third-party claims. McLaughlin v. UNUM Life Ins. Co. of Am., 224 F. Supp. 2d 283, 285 (D. Me. 2002); Leasetec Corp. v. Inhabitants of the County of Cumberland, 896 F. Supp. 35, 38 (D. Me. 1995).

Rule 14 of the Federal Rules of Civil Procedure provides, in pertinent part:

At any time after commencement of the action a defending party, as third-party plaintiff, may cause a summons and complaint to be served upon a person not a party to the action who is or may be liable to the third-party plaintiff for all or part of the plaintiff's claim against the third-party plaintiff.

Fed. R. Civ. P. 14(a). Leasetec is the leading case in this district on the limits of third-party practice. In Leasetec, Judge Carter outlined the parameters set by Rule 14 as follows:

The rule is characterized as restricting the assertion of a third-party complaint to cases in which "the third party's liability is in some way dependant on the outcome of the main claim or when the third party is secondarily liable to defendant." Charles Alan Wright & Arthur R. Miller, *Federal Practice and Procedure*, § 1446 at 3556-56 (1990). This secondary or derivative liability is the primary factor in a 14(a) analysis and the requirement that it exist may be satisfied "if the third-party claim asserts indemnity, subrogation, contribution, express or implied warranty, or some other theory." *Id.* at 3[5]61-64. One court stated, "Rule 14(a) does not allow the defendant to assert a separate and independent claim even though the claim arises out of the same general set of facts as the main claim." *United States v. Olavarrieta*, 812 F.2d 640, 643 (11th Cir. 1987). The United States Supreme Court has stated that a third-party complaint brought under 14(a) "depends at least in part upon the resolution of the primary lawsuit. . . . Its relation to the original complaint is thus not mere factual similarity but logical dependence." *Owen Equipment & Erection Co.*, 437 U.S. 365, 376, 57 L. Ed. 2d 274, 98 S. Ct. 2396 (1978).

*Id.* at 40. The burden of showing that the third-party complaint is proper rests with the third-party claimant. *Id.*

Turning to the Rule 12(b)(6) component of the motions to dismiss, the most recent federal decisions and opinions on Rule 8 suggest that Rules 12(e) and 56 offer better tools for resolving the issues raised by *Ernst & Young*. See *Swierkiewicz v. Sorema N. A.*, 534 U.S. 506, 514 (2002) ("If a pleading fails to specify the allegations in a manner that provides sufficient notice, a defendant can move for a more definite statement under Rule 12(e) before responding. Moreover, claims lacking merit may be dealt with through summary judgment under Rule 56."); *Greenier v. Pace, Local No. 1188*, 201 F. Supp. 2d 172, 177 (D. Me. 2002) ("[T]he Court must review the Complaint guided not by the narrow question of whether it contains facts that, if true, could satisfy every element of a . . . claim, but rather by the broader question of whether the Complaint contains enough information to put Defendant on notice of the nature of Plaintiff's claims.").

**A. *The financial statement argument***

Like Morgan, the director defendants focus on Ernst & Young's involvement with the 2001 financial statements and on Ernst & Young's knowledge that the statements were material to the BCC sale and lease back transaction. However, also like Morgan, they never directly allege that Ernst & Young had any knowledge of the property transfers from GNP to Inexcon, Maine. (Docket No. 87 at 3.) Thus, both Morgan and the directors argue that the fact that Ernst & Young was involved with the preparation of the 2001 financial statements in connection with the BCC transactions renders their third-party claims against Ernst & Young derivative of BCC's claims.

In response to these arguments, Ernst & Young observes that the third-party plaintiffs have not pled that they "requested or received any advice from Ernst & Young with respect to the reporting or disclosure of any fact that BCC alleges was fraudulently or negligently misrepresented or concealed from it in the period prior to the consummation of the sale and leaseback transaction." (Docket No. 89 at 4; Docket No. 90 at 3.) I agree with Ernst & Young that the third-party complaints' silence with respect to Ernst & Young's knowledge of the relevant and material property transfers between GNP and Inexcon Maine is deafening, particularly as the existence of such knowledge should be known to GNP's officers and directors, could have been alleged in general terms, see Fed. R. Civ. P. 9(b), and is not inherent in the relationship between a company and its accountants.<sup>3</sup>

However, it is also apparent that the allegations in the third-party complaints have placed Ernst & Young on notice of the possible contours of any third-party claims. Elsewhere in their

---

<sup>3</sup> Strangely, in opposition to Ernst & Young's motion to dismiss on the alternative basis of failure to state a claim, the director defendants concede the significance of the knowledge element. There they observe that "the degree to which [Ernst & Young] knew or should have known the financial statements were inaccurate is a question that requires development of a factual record." (Docket No. 87 at 8-9.) I heartily agree with that statement, including the need for development of a factual record.

opposition memorandum the directors assert, "The entire basis for the Third-Party Complaint is that [Ernst & Young] improperly prepared the financial statements and the Outside [Directors] would not have authorized the BCC Transaction but for the conduct of [Ernst & Young]."

(Docket No. 87 at 18.) The directors' representation that their third-party complaint alleges that Ernst & Young improperly prepared GNP's 2001 financial statements is not fully accurate. A review of the directors' third-party complaint makes it plain that the directors have not alleged that Ernst & Young improperly prepared GNP's financial statements, only that the directors relied on some unspecified "tax, accounting and financial advice supplied by [Ernst & Young] with respect to the allegedly wrongful financial statements and real estate transactions<sup>4</sup>] that form the basis for the Complaint." (Docket No. 54, ¶¶ 16.) My view is that this allegation is designed more to dance around the issue of Ernst & Young's knowledge or notice of the subject asset transfers than to plainly state a proper derivative claim.

Reviewing the directors' complaint guided not by the narrow question of whether it contains facts that, if true, could satisfy every element of the claim, but rather by the broader question of whether the complaint puts Ernst & Young on notice of the claim, I am satisfied that the director defendants' complaint does state a claim that could possibly derive from BCC's primary claim against them and does satisfy the liberal pleading requirements under Rule 8 of the Federal Rules of Civil Procedure. The broad contours of that claim are that because of Ernst & Young's unspecified conduct vis-à-vis the 2001 financial statements, the director defendants

---

<sup>4</sup> The potential for obfuscation in the directors' reference to their reliance on Ernst & Young's advice concerning "real estate transactions" is also reflected in Morgan's third-party complaint, where he alleges that Ernst & Young was asked to provide advice about tax and other ramifications and how to account for the transaction on GNP's books. Even if the court takes the allegations in the directors' third-party complaint as true, the language is so vague that it is impossible to know exactly what facts underlie the directors' allegations and whether they are relying only upon unspecified "tax" advice on the sale of real estate or other, more related advice, in terms of the primary claim. The vagueness of the third party complaint makes the Rule 14 motion an extremely close call, but at this juncture, one I conclude is best made in favor of the director defendants.

may have liability to BCC who relied upon those statements. A complaint pled in that fashion could be derivative of BCC's complaint.

According to defendant Morgan, his claims are derivative of the primary claims because BCC alleges that it relied upon the 2001 financial statements that were prepared and issued by Ernst & Young and, therefore, to the extent the statements were false or failed to comply with generally accepted accounting principles (GAAP) by failing to reference the property transfers to Inexcon, Maine, Morgan's claims against Ernst & Young must derive from BCC's misrepresentation claims. (Docket No. 88 at 2, 7-9.) This allegation of Morgan's complaint suffices under the same rationale as I discussed above and therefore avoids dismissal of the complaint.

***B. The "but for Ernst & Young's advice" argument***

The director defendants also argue in their memorandum in opposition that they "relied upon the advice of [Ernst & Young] in entering into the BCC transaction, and but for the conduct of [Ernst & Young, they] would not have authorized the BCC transaction." (Docket No. 87 at 4; see also id. at 7.) This suggestion that GNP would not have gone forward with the BCC transaction had Ernst & Young properly advised GNP's officers and directors concerning the financial consequences of the transaction is not plainly alleged in either of the third-party complaints, although it can be inferred from allegations contained in them. Morgan's third-party complaint, in particular, appears to advance exactly this theory. In essence, the argument appears to be that but for the allegedly negligent nature of Ernst & Young's advice (or failure to advise), the officer and director defendants would have been alerted to the fact that the transaction was not good for GNP and they would not have proceeded with the BCC transaction. By extension, had they avoided this transaction, they would not have had occasion to

fraudulently or negligently fail to disclose the transfers of GNP assets to Inexcon, Maine, as alleged by BCC. In its reply memoranda, Ernst & Young essentially argues that this theory of liability cannot derive from BCC's claims because, even if one assumes that Ernst & Young breached a duty in failing to advise the defendants that this transaction did not make financial sense, such a breach has nothing whatsoever to do with the defendants' alleged decision to fraudulently or negligently conceal material asset transactions in order to close on the transaction.

In my assessment, the “but for” theory of liability does not, in itself, state a proper third-party action because proof that the officer and director defendants tortiously misrepresented material facts to induce financing from BCC will not tend to prove that Ernst & Young was negligent with respect to its provision of professional services related to the tax and possibly other financial consequences of the deal. Indeed, the claim of professional negligence would require an entirely different order of proof, including expert testimony on the standard of care, from that which is required of BCC to establish that the defendants knowingly and intentionally withheld material financial information to induce financing. In other words, even though the “but for” claim of professional negligence arises out of the same general set of facts and circumstances, it does not have any logical dependence on BCC's misrepresentation claims.

The third-party plaintiffs offer some arguments that reflect how their claims depend more on the “but for” theory of liability discussed above, which I have concluded is not properly asserted in the third-party context, than on a theory that Ernst & Young is jointly liable to BCC because it knew all of the particulars of GNP's alleged asset transfers in 2001. In particular, in order to establish proximate causation on their negligence claim, the directors rely on the argument that “but for the failure of Ernst & Young to provide correct advice, the Directors

would not have permitted GNP to enter into the transaction with BCC," similarly in order to establish duty the directors point to Ernst & Young's provision of advice regarding "tax and other ramifications of the BCC transaction." (Docket No. 87 at 9; see also id. at 15-16 & 18.) In both instances, they seem to be referring to their independent claims that Ernst & Young failed to advise them of the fact that the BCC transaction was not good for GNP.

Like the directors, Morgan discusses duty, breach and causation in terms of the "but for" theory of liability. Thus, Morgan explains that "the Third-Party Complaint can be reasonably read to sufficiently allege that Morgan would not have recommended that the board of directors authorize the BCC transaction 'but for' [Ernst & Young's] failure to provide competent tax, accounting and financial advice."<sup>5</sup> (Docket No. 88 at 11.) Furthermore, Morgan's portrayal of the evidence discovery is producing runs along the same line. According to Morgan, "it has become apparent . . . that internal [Ernst & Young] emails suggest that [Ernst & Young's] tax department was never requested to advise Morgan and his accounting staff on the tax implications of [the] BCC transaction." (Id. at 12.)

While this line of reasoning establishes the third party complaints do state claims under Rule 12(b)(6) against Ernst & Young (albeit, claims that might properly belong to GNP rather than these particular defendants, an issue I do not reach on this record<sup>6</sup>), I am not persuaded that this line of reasoning leads to the conclusion that the claim is derivative of BCC's claim. Morgan's third-party complaint, in particular, clearly seeks to impose liability on Ernst & Young based upon the non-provision of tax and financial advice. Claims against an accounting professional based on the non-provision of advice pertaining to the financial sense of a business

---

<sup>5</sup> At page 14 of his opposition memorandum, Morgan reiterates this point, describing his third-party complaint as alleging "that 'but for' the negligent misrepresentations of [Ernst & Young], Morgan would not have recommended the BCC transaction to his fellow officers and the board of directors." (Docket No. 88 at 14.)

<sup>6</sup> Ernst & Young does make reference to this issue, noting that its duty ran to GNP not the directors. (See Docket No. 90 at 5).

transaction, in my view, are not logically dependent on claims that the party seeking the advice "cooked its books" in order to induce another party to close on the transaction. The directors' third-party complaint is only a little better. Although the directors use vague language to disguise the independent nature of their claims against Ernst & Young, their memorandum reveals that key elements of their claims greatly depend on the same basic theory that Morgan presents: if they are liable for fraud or misrepresentation in their dealings with BCC, Ernst & Young must be liable to them for failing to dissuade them from entering into the transaction. Because these theories articulated by the third-party plaintiffs do not suggest that Ernst & Young could be derivatively liable for fraud or misrepresentation, because there are no allegations that Ernst & Young had any knowledge of the underlying, allegedly non-disclosed asset transfers on which BCC's primary action turns, the third-party plaintiffs' opposition to the 12(b)(6) portion of the motion actually reinforces a conclusion that dismissal is warranted on the basis of Rule 14. I mention this now because if the court receives a subsequent motion with a factual record that supports the conclusion that the "but for" theory of liability is the sole basis for this third-party action, I would not want this recommended decision to be the basis for third-party plaintiffs' assertion that the court had already ruled that this claim was derivative under the "but for" theory of liability. It is primarily the vague language of the directors' complaint regarding their reliance upon Ernst & Young's advice coupled with the rather unique intersection of Rule 8 and Rule 14 at this stage of the proceedings, that leads me to the conclusion that dismissal of the third party action against Ernst & Young would be inappropriate. Conceivably, an appropriately derivative third party claim exists under the "financial statement argument," but a factual record must be developed before that question can ultimately be resolved. As the defendants point out in their memoranda, if such a derivative claim exists, the "but for" negligence claim could proceed under

Rule 18, as a claim that is properly joined with the derivative claim. (Docket No. 87 at 19;  
Docket No. 88 at 15.)

### **Conclusion**

For the reasons stated herein, I **RECOMMEND** that the court **DENY** Ernst & Young's motions to dismiss on the basis of Rule 14(a) and Rule 12 (b)(6).

### **NOTICE**

A party may file objections to those specified portions of a magistrate judge's report or proposed findings or recommended decisions entered pursuant to 28 U.S.C. § 636(b)(1)(B) for which *de novo* review by the district court is sought, together with a supporting memorandum, and request for oral argument before the district judge, if any is sought, within ten (10) days of being served with a copy thereof. A responsive memorandum and any request for oral argument before the district judge shall be filed within ten (10) days after the filing of the objection.

Failure to file a timely objection shall constitute a waiver of the right to *de novo* review by the district court and to appeal the district court's order.

/s/ Margaret J. Kravchuk  
U.S. Magistrate Judge

Dated September 17, 2004

BCC EQUIPMENT LEASING CORPORATION v.  
BEDARD et al

Assigned to: JUDGE GEORGE Z. SINGAL

Referred to:

Demand: \$

Lead Docket: None

Related Cases: None

Case in other court: None

Cause: 28:1332 Diversity-Fraud

Date Filed: 11/12/03

Jury Demand: None

Nature of Suit: 370 Fraud or Truth-In-Lending

Jurisdiction: Diversity

### **Plaintiff**

-----

**BCC EQUIPMENT LEASING  
CORPORATION**

represented by **C. DYLAN SANDERS**  
PIPER RUDNICK LLP  
ONE INTERNATIONAL PLACE,  
21ST FLOOR  
BOSTON, MA 02110-2600

617-406-6016  
*LEAD ATTORNEY*  
*ATTORNEY TO BE NOTICED*

**JOHN A.D. GILMORE**  
PIPER RUDNICK LLP  
ONE INTERNATIONAL PLACE,  
21ST FLOOR  
BOSTON, MA 02110-2600  
617-406-6022  
*LEAD ATTORNEY*  
*ATTORNEY TO BE NOTICED*

**JOHN P. MCVEIGH**  
PRETI, FLAHERTY, BELIVEAU,  
PACHIOS & HALEY, LLC  
PO BOX 9546  
PORTLAND, ME 04112-9546  
791-3000  
Fax : 791-3111  
Email: jmcveigh@preti.com  
*LEAD ATTORNEY*  
*ATTORNEY TO BE NOTICED*

V.

**Defendant**

-----

**LAMBERT BEDARD**

represented by **MICHAEL K. MARTIN**  
PETRUCCELLI, MARTIN &  
HADDOW, LLP  
PO BOX 17555  
PORTLAND, ME 4112-8555  
775-0200  
Email:  
mmartin@petrucellimartin.com  
*ATTORNEY TO BE NOTICED*

**NICHOLAS H. WALSH**  
111 COMMERCIAL STREET  
PORTLAND, ME 04101  
(207) 772-2191  
Email: nwalsh@gwi.net

*ATTORNEY TO BE NOTICED*

**ELDON DOODY**

represented by **SAMUEL W. LANHAM, JR.**  
CUDDY & LANHAM  
470 EVERGREEN WOODS  
BANGOR, ME 4401  
(207) 942-2898  
Email: slanham@cuddylanham.com  
*LEAD ATTORNEY*  
*ATTORNEY TO BE NOTICED*

**DAVID C. KING**  
RUDMAN & WINCHELL  
84 HARLOW STREET  
P.O. BOX 1401  
BANGOR, ME 04401  
(207) 947-4501  
Email: dking@rudman-winchell.com  
*TERMINATED: 01/27/2004*  
*ATTORNEY TO BE NOTICED*

**TIMOTHY MORGAN**

represented by **SEAN P JOYCE**  
JOYCE & JOYCE LLC  
75 PEARL ST.  
SUITE 204  
PORTLAND, ME 04101  
207-828-5750  
Email: joycejoyce@1stcounsel.com  
*ATTORNEY TO BE NOTICED*

**JOSEPH KASS**

represented by **RANDY J. CRESWELL**  
PERKINS, THOMPSON,  
HINCKLEY & KEDDY  
ONE CANAL PLAZA  
P. O. BOX 426 DTS  
PORTLAND, ME 4112  
207/774-2635  
Email:  
rcreswell@perkinsthompson.com  
*LEAD ATTORNEY*  
*ATTORNEY TO BE NOTICED*

**JOHN HUBBARD RICH, III**

PERKINS, THOMPSON,  
HINCKLEY & KEDDY  
ONE CANAL PLAZA  
P. O. BOX 426 DTS  
PORTLAND, ME 4112  
774-2635  
Email: jrich@perkinsthompson.com  
*ATTORNEY TO BE NOTICED*

**ROBERT LEATHERS**

represented by **MARTHA C. GAYTHWAITE**  
FRIEDMAN, GAYTHWAITE,  
WOLF & LEAVITT  
SIX CITY CENTER  
P. O. BOX 4726  
PORTLAND, ME 4112-4726  
761-0900  
Email: mgaythwaite@fgwl-law.com  
*LEAD ATTORNEY*  
*ATTORNEY TO BE NOTICED*

**BRUCE W. HEPLER**  
FRIEDMAN, GAYTHWAITE,  
WOLF & LEAVITT  
SIX CITY CENTER  
P. O. BOX 4726  
PORTLAND, ME 4112-4726  
(207) 761-0900  
Email: bhepler@fgwl-law.com  
*ATTORNEY TO BE NOTICED*

**NICHOLAS H. WALSH**  
(See above for address)  
*TERMINATED: 03/10/2004*  
*ATTORNEY TO BE NOTICED*

**MENDEL SCHWIMMER**

represented by **JAMES F. MARTEMUCCI**  
MARTEMUCCI & TOPCHIK  
94 COMMERCIAL STREET, SUITE  
301  
PO BOX 17767  
PORTLAND, ME 04112-7767  
(207) 772-1986  
Email: jfmlaw@maine.rr.com  
*ATTORNEY TO BE NOTICED*

**L. JOHN TOPCHIK**  
MARTEMUCCI & TOPCHIK  
94 COMMERCIAL STREET, SUITE  
301  
PO BOX 17767  
PORTLAND, ME 04112-7767  
761-0900  
Email: jtopchik@topchik-law.com  
*ATTORNEY TO BE NOTICED*

**NICHOLAS H. WALSH**  
(See above for address)  
*TERMINATED: 03/10/2004*  
*ATTORNEY TO BE NOTICED*

**HAROLD GORDON**

represented by **MARTHA C. GAYTHWAITE**  
(See above for address)  
*LEAD ATTORNEY*  
*ATTORNEY TO BE NOTICED*

**BRUCE W. HEPLER**  
(See above for address)  
*ATTORNEY TO BE NOTICED*

**JOHN KELSALL**

represented by **MARTHA C. GAYTHWAITE**  
(See above for address)  
*LEAD ATTORNEY*  
*ATTORNEY TO BE NOTICED*

**BRUCE W. HEPLER**  
(See above for address)  
*ATTORNEY TO BE NOTICED*

**BENOIT MICHEL**

represented by **MARTHA C. GAYTHWAITE**  
(See above for address)  
*LEAD ATTORNEY*  
*ATTORNEY TO BE NOTICED*

**BRUCE W. HEPLER**  
(See above for address)

*ATTORNEY TO BE NOTICED*

represented by **NICHOLAS H. WALSH**  
(See above for address)  
*ATTORNEY TO BE NOTICED*

**ThirdParty Plaintiff**  
-----

**MENDEL SCHWIMMER**

represented by **JAMES F. MARTEMUCCI**  
(See above for address)  
*LEAD ATTORNEY*  
*ATTORNEY TO BE NOTICED*

V.

**ThirdParty Defendant**  
-----

**BRANN & ISAACSON, LLP**

represented by **CHARLES A. HARVEY, JR.**  
HARVEY & FRANK  
TWO CITY CENTER  
P.O. BOX 126  
PORTLAND, ME 4112  
207-775-1300  
Email: harvey@harveyfrank.com  
*LEAD ATTORNEY*  
*ATTORNEY TO BE NOTICED*

**ROBERT S. FRANK**  
HARVEY & FRANK  
TWO CITY CENTER  
P.O. BOX 126  
PORTLAND, ME 4112  
207-775-1300  
Email: frank@harveyfrank.com  
*ATTORNEY TO BE NOTICED*

**ThirdParty Plaintiff**  
-----

**HAROLD GORDON**

represented by **BRUCE W. HEPLER**  
(See above for address)

*LEAD ATTORNEY  
ATTORNEY TO BE NOTICED*

**MARTHA C. GAYTHWAITE**  
(See above for address)  
*LEAD ATTORNEY  
ATTORNEY TO BE NOTICED*

**JOHN KELSALL**

**ROBERT LEATHERS**

**BENOIT MICHEL**

V.

**ThirdParty Defendant**

-----

**BRANN & ISAACSON, LLP**

**ThirdParty Plaintiff**

-----

**HAROLD GORDON**

**JOHN KELSALL**

represented by **BRUCE W. HEPLER**  
(See above for address)  
*ATTORNEY TO BE NOTICED*

**ROBERT LEATHERS**

represented by **BRUCE W. HEPLER**  
(See above for address)  
*ATTORNEY TO BE NOTICED*

**BENOIT MICHEL**

represented by **BRUCE W. HEPLER**  
(See above for address)  
*ATTORNEY TO BE NOTICED*

V.

**ThirdParty Defendant**

-----

**ERNST & YOUNG, LLP**

represented by **JOSEPH DOWNES, III**  
CHOATE, HALL & STEWART  
EXCHANGE PLACE  
53 STATE ST.  
BOSTON, MA 02109-2804  
617-248-5263  
*ATTORNEY TO BE NOTICED*

**MITCHELL KAPLAN**  
CHOATE, HALL & STEWART  
EXCHANGE PLACE  
53 STATE ST.  
BOSTON, MA 02109-2804  
617-248-5158  
*ATTORNEY TO BE NOTICED*

**MARGARET MINISTER  
O'KEEFE**  
PIERCE, ATWOOD LLP  
ONE MONUMENT SQUARE  
PORTLAND, ME 04101-1110  
791-1100  
Email: [mokeefe@pierceatwood.com](mailto:mokeefe@pierceatwood.com)  
*ATTORNEY TO BE NOTICED*

**ERNST & YOUNG, US LLP**

represented by **JOSEPH DOWNES, III**  
(See above for address)  
*ATTORNEY TO BE NOTICED*

**MITCHELL KAPLAN**  
(See above for address)  
*ATTORNEY TO BE NOTICED*

**MARGARET MINISTER  
O'KEEFE**  
(See above for address)  
*ATTORNEY TO BE NOTICED*

**ERNST & YOUNG, INC  
(CANADA)**

represented by **JOSEPH DOWNES, III**  
(See above for address)

*ATTORNEY TO BE NOTICED*

**MITCHELL KAPLAN**  
(See above for address)  
*ATTORNEY TO BE NOTICED*

**MARGARET MINISTER  
O'KEEFE**  
(See above for address)  
*ATTORNEY TO BE NOTICED*

**ERNST & YOUNG LLP  
(CANADA)**

represented by **JOSEPH DOWNES, III**  
(See above for address)  
*ATTORNEY TO BE NOTICED*

**MITCHELL KAPLAN**  
(See above for address)  
*ATTORNEY TO BE NOTICED*

**MARGARET MINISTER  
O'KEEFE**  
(See above for address)  
*ATTORNEY TO BE NOTICED*

**ThirdParty Plaintiff**

-----

**TIMOTHY MORGAN**

represented by **SEAN P JOYCE**  
(See above for address)  
*LEAD ATTORNEY*  
*ATTORNEY TO BE NOTICED*

V.

**ThirdParty Defendant**

-----

**ERNST & YOUNG, US LLP**

represented by **MARGARET MINISTER  
O'KEEFE**  
(See above for address)  
*ATTORNEY TO BE NOTICED*

**ThirdParty Plaintiff**

-----

**TIMOTHY MORGAN**

V.

**ThirdParty Defendant**

-----

**ERNST & YOUNG LLP  
(CANADA)**

represented by **MARGARET MINISTER  
O'KEEFE**  
(See above for address)  
*ATTORNEY TO BE NOTICED*